BERKELEY, and the COUNTY OF ALAMEDA, on behalf of the general public,

Plaintiffs,

v.

ARCADIA MACHINE & TOOL, INC., BRYCO ARMS, INC., DAVIS INDUSTRIES, INC., EXCEL INDUSTRIES, INC., LORCIN ENGINEERING CO., INC., CHINA NORTH INDUSTRIES, PHOENIX ARMS, SUNDANCE INDUSTRIES, INC., BERETTA U.S.A. CORP., PIETRO BERETTA Sp. A., BROWNING ARMS CO., CARL WALTHER GmbH, CHARTER ARMS, INC., COLT'S MANUFACTURING CO., INC., FORJAS TAURUS, S.A., TAURUS INTERNATIONAL MANUFACTURING, INC., GLOCK, INC., GLOCK GmbH, H&R 1871 INC., HECKLER & KOCH, INC., KEL-TEC CNC INDUSTRIES, INC., MKS SUPPLY INC., NAVEGAR, INC., NORTH AMERICAN ARMS, INC., SIGARMS, INC., SMITH AND WESSON CORP., S.W. DANIELS, INC., STURM RUGER & COMPANY, INC., AMERICAN SHOOTING SPORTS COUNCIL, INC., NATIONAL SHOOTING SPORTS FOUNDATION, INC., SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC., B.L. JENNINGS, INC., ELLETT BROTHERS INC., INTERNATIONAL ARMAMENT CORP., RSR WHOLESALE GUNS, INC., SOUTHERN OHIO GUN DISTRIBUTORS, TRADERS SPORTS, INC., and DOES 1-200,

Defendants.

FOR UNFAIR, UNLAWFUL AND DECEPTIVE TRADE PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 AND 17500

The People of the State of California allege as follows:

I. NATURE OF THE ACTION

1. This action is brought on behalf of the People of the State of California against major manufacturers and distributors of handguns, and their trade associations. These

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Center to Prevent Handgun Violence

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through San Francisco City Attorney Louise H. Renne, Berkeley City Attorney Manuela Albuquerque, Sacramento City Attorney Samuel L. Jackson, and San Mateo County Counsel Thomas F. Casey, III; JOE SERNA, JR., Mayor of Sacramento, the CITY OF	Case No. **COMPLAINT FOR MAINTAINING A PUBLIC NUISANCE AND**

Defendants knowingly and recklessly market, distribute, promote, design and sell handguns – a dangerous product that is the primary tool used to commit violent crime -- in a manner that facilitates the use of handguns in crime, that fails to incorporate reasonable safety features, that deceives the public about the dangers of possessing a firearm, and that circumvents federal, state and local laws. Defendants' conduct constitutes a pattern of unlawful, unfair and deceptive business acts and practices, and has created a public nuisance. Defendants have unjustifiably enriched themselves through these practices, and have shifted the burden of the true costs of defendants' products to the victims of gun violence and to the taxpayers. The resulting levels of shooting deaths and injuries in California and the entire nation exceed those in almost every other area of the world, impose enormous economic costs, and unreasonably interfere with the safety, health, well-being and quality of life of the People of the State of California.

2. As a result of the unlawful, unfair and/or deceptive business practices of Defendants, thousands of California residents have died, suffered serious bodily injury, or been exposed to increased criminal activity involving handguns. In 1997 alone, there were 1,835 homicides committed with a firearm in California. In addition, firearms caused over 25,000 other serious injuries in California that year. The vast majority of these deaths and injuries are attributable to handguns. Considered in the aggregate, these statistics demonstrate the magnitude of the problem caused by handguns. Moreover, behind each statistic lies a personal tragedy. The details of just a few of these tragedies demonstrate the terrible toll that Defendants' practices have inflicted on the victims of handgun violence and their families:

- On July 1, 1993, Gian Luigi Ferri, armed with two TEC-DC9 9-mm assault weapons manufactured by defendant Navegar and a pistol manufactured by defendant Norinco, conducted a murderous attack on the San Francisco law firm of Pettit & Martin and other occupants of 101 California Street. After California enacted a law that expressly banned Navegar's TEC-9 model, Navegar continued to manufacture the identical model under the name "TEC-DC9." Navegar later claimed that the model labeled "TEC-DC9" was not covered by California's assault weapons ban. Ferri, a California resident, had illegally

purchased the TEC-DC9 assault weapons in Nevada. Ferri's shooting spree killed eight, wounded six, and forever changed the lives of countless others, especially those who had lost a spouse and the young children who lost a parent.

- On June 23, 1996, a teenage couple was gunned down while sitting on the grass of Precita Park in San Francisco. The perpetrator of this random shooting was later determined to be incompetent to stand trial, yet he had three handguns in his possession at the time of the murders.
- In June of 1997, a 23-year-old man with an extensive criminal history used a 9-mm semi-automatic pistol manufactured by defendant Browning to kill his mother, his ex-girlfriend and her four-month-old daughter in his mother's San Francisco home.
- In December 1998, an unknown robber shot a 29-year-old San Francisco janitor, as the victim walked home from the grocery store with his family's Christmas turkey. As a result of the shooting, the victim is now paralyzed and unable to support his four children, two of whom are under the age of four.
- On February 9, 1999, a veteran Sacramento Police Officer was gunned down after making a routine traffic stop. The suspect, who was wanted for a parole violation, had previously been convicted of drug and weapons charges and was legally prohibited from possessing a firearm. The suspect was nevertheless able to obtain a 9-mm semiautomatic pistol, manufactured by defendant Glock, which he used to murder the Officer.
- Two recent incidents in Sacramento demonstrate the ease with which youths can gain unauthorized possession of firearms, and the tragic consequences that often result. On February 21, 1999, a group of youths affiliated with a gang committed two separate drive-by shootings, killing one man and wounding two teenagers. The victims were apparently shot simply because they were in the wrong place at the wrong time, wearing the wrong colors. The suspects had obtained their weapons, a 9-mm semiautomatic pistol and a .38 caliber handgun, from one of the youth's home. In the second incident, a woman was critically wounded while standing in the front hallway of her home on March 17, 1999. The victim

was helping her two young grandchildren put on their coats, when nine rounds of semiautomatic fire ripped through her front door. The suspects were on parole from the California Youth Authority at the time of the shooting, and were prohibited from possessing firearms.

- On October 23, 1998, a San Francisco teenager was accidentally shot by his best friend, an eighteen-year-old male, with a Jennings .25 caliber pistol. The two boys were sitting in a car when the victim pulled out a gun to show it to his friend. The eighteen-year-old thought that the pistol was a toy gun. When the eighteen-year-old grabbed the gun, he accidentally hit the trigger. The gun fired and the bullet struck the victim in the right side of his chest, seriously injuring him.

3. In order to reduce the endless succession of handgun-related tragedies, Plaintiffs bring this action to abate the public nuisance created by Defendants; to enjoin Defendants' unlawful, unfair and/or deceptive business practices; to obtain restitution and disgorgement of Defendants' wrongfully-obtained monies; and to impose civil penalties.

I. THE PARTIES

4. This action is brought on behalf of the People of the State of California by San Francisco City Attorney Louise H. Renne, Berkeley City Attorney Manuela Albuquerque, Sacramento City Attorney Samuel L. Jackson, and San Mateo County Counsel Thomas F. Casey, III, pursuant to California Code of Civil Procedure section 731, California Business and Professions Code section 17204, and/or California Business and Professions Code section 17535. The San Mateo District Attorney's Office has authorized the San Mateo County Counsel's Office to prosecute this action on behalf of the People, pursuant to California Business and Professions Code section 17204.

5. Joining the People as plaintiffs in this action are Sacramento Mayor Joe Serna, Jr., the City of Berkeley, and the County of Alameda, all of whom are suing on behalf of the general public pursuant to California Business and Professions Code sections 17204.

6. Defendants, and each of them, are sued individually as a primary violator and/or as an aider and abettor. In acting to aid and abet the commission of the unlawful, unfair and deceptive business practices complained of herein, each defendant acted with the awareness of the wrongfulness of such practices and nonetheless rendered substantial assistance or encouragement to the accomplishment of the wrongful practices and was aware of the overall contribution to the common course of wrongful conduct alleged herein.

7. The following Defendants design and/or manufacture firearms that have been wrongfully marketed, distributed, and/or sold in California (hereinafter referred to as the "Defendant Manufacturers"):

i. Defendant Arcadia Machine & Tool Inc. ("AMT") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

ii. Defendant Bryco Arms, Inc. ("Bryco") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in California.

iii. Defendant Davis Industries, Inc. ("Davis") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

iv. Defendant Excel Industries Inc., (AKA "Accu-tek") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

v. Defendant Lorcin Engineering Co., Inc. ("Lorcin") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

vi. Defendant China North Industries (AKA "Norinco") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

vii. Defendant Phoenix Arms ("Phoenix") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

viii. Defendant Sundance Industries, Inc. ("Sundance") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

ix. Defendant Beretta U.S.A. Corp. ("Beretta U.S.A.") is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Maryland. Beretta U.S.A. is qualified to do business in California. Beretta U.S.A. imports and distributes firearms manufactured by defendant Pietro Beretta Sp. A.

x. Defendant Pietro Beretta Sp. A. ("Pietro Beretta") is a corporation organized and existing under the laws of Italy with its principal place of business in Italy.

xi. Defendant Browning Arms Co. ("Browning") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

xii. Defendant Carl Walther GmbH ("Carl Walther") is a corporation organized and existing under the laws of the Federal Republic of Germany with its principal place of business in the Federal Republic of Germany.

xiii. Defendant Charter Arms, Inc. ("Charter Arms") is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in New Jersey.

xiv. Defendant Colt's Manufacturing Company, Inc. ("Colt") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut.

xv. Defendant Forjas Taurus, S.A. ("Forjas Taurus") is a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil.

xvi. Defendant Taurus International Manufacturing, Inc. ("Taurus") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. Taurus manufactures firearms in Florida and imports firearms manufactured by defendant Forjas Taurus.

xvii. Defendant Glock, Inc. ("Glock") is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Georgia, and is qualified to do business in California. Glock Inc. imports and distributes firearms manufactured by defendant Glock GmbH.

xviii. Defendant Glock GmbH ("Glock GmbH") is a corporation organized and existing under the laws of Austria with its principal place of business in Austria.

xix. Defendant H&R 1871, Inc. ("H&R") is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts.

xx. Defendant Heckler & Koch, Inc. ("Heckler & Koch") is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Virginia. Heckler & Koch is the United States subsidiary of Heckler & Koch, GmbH, a corporation organized in the Federal Republic of Germany.

xxi. Defendant Kel-Tec CNC Industries, Inc. ("Kel-Tec") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.

xxii. Defendant MKS Supply Inc. d/b/a Hi-Point Firearms ("Hi-Point") is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Ohio.

xxiii. Defendant Navegar, Inc. d/b/a Intratec U.S.A., Inc. ("Navegar") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.

xxiv. Defendant North American Arms, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

xxv. Defendant Sigarms, Inc. ("Sigarms") is a corporation organized in the State of New Hampshire, with its principal place of business in New Hampshire.

xxvi. Defendant Smith & Wesson Corp. ("Smith & Wesson") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts, and is qualified to do business in California.

xxvii. Defendant S.W. Daniels, Inc. (AKA Cobray Firearms, Inc.) is a corporation organized and existing under the laws of Georgia with its principal place of business in Georgia.

xxviii. Defendant Sturm, Ruger & Company, Inc. ("Sturm Ruger") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut.

8. At all times relevant herein, DOES 1-100, inclusive, were business entities, the status of which are currently unknown. DOES 1-100 designed and/or manufactured firearms that are or were distributed, marketed, and/or sold within the jurisdictional limits of California (hereinafter referred to as among the "Defendant Manufacturers").

9. The following Defendants are industry trade associations (hereinafter referred to as the "Defendant Trade Associations") that are composed of firearm manufacturers, distributors, and sellers, including some or all of the Defendant Manufacturers:

i. Defendant American Shooting Sports Council, Inc. ("ASSC") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Georgia with its principal office in Georgia.

xviii. Intersection Mortgage, Inc. (Ohio) Investor L.L.A., Inc. ("Mortgage") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.

xix. Intersection Mortgage, Inc. (Ohio) Investor, Inc. ("Investor") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Florida.

xx. Intersection Mortgage, Inc. ("Intersection") is a corporation organized in the State of Delaware with its principal place of business in New Hampshire.

xxi. Intersection Mortgage Corp. ("Intersection Corp.") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts and is qualified to do business in California.

xxii. Intersection S.W. Portfolio, Inc. (AKA Colony Finance, Inc.) is a corporation organized and existing under the laws of Georgia with its principal place of business in Georgia.

xxiii. Intersection Square Mortgage Corporation ("Square Mortgage") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in California.

8. As a direct and proximate result of the Defendants' unlawful acts and omissions, the acts of which are complained of herein, the Intersection Entities have suffered loss of money and property, including, but not limited to, loss of money and property in the amount of approximately Twenty Million Dollars ($20,000,000.00) (the "Damages").

9. The following Intersection Entities are indirectly, partly owned by Intersection Holdings or have been dissolved or merged into Intersection Holdings: Intersection Mortgage Corp., Intersection Portfolio, Inc., Intersection Square Mortgage Corporation, Intersection and subject, including without limitation, the Intersection Mortgage Corp.

10. Defendant Intersection Shopping Square Corporation ("Intersection") is a corporation organized under the laws of the State of Delaware with its principal place of business in Massachusetts and is qualified to do business in California.

ii. Defendant National Shooting Sports Foundation, Inc. ("NSSF") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut.

iii. Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. ("SAAMI") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut.

10. At all times relevant herein, DOES 101-125, inclusive, were business entities, the status of which are currently unknown. DOES 101-125 are industry trade associations (hereinafter referred to as among the "Defendant Trade Associations"), which are composed of firearm manufacturers, distributors, and/or sellers, including some or all of the Defendant Manufacturers.

11. The following Defendants, and each of them, import, distribute and/or market firearms that are or were found within the jurisdictional limits of California, and/or make retail sales of firearms in California (hereinafter referred to as the "Defendant Distributors"):

i. Defendant B.L. Jennings, Inc. is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada. B.L. Jennings, Inc. distributes guns made by Defendant Bryco in California.

ii. Defendant Ellett Brothers, Inc. is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina. Ellett Brothers telemarkets firearms nationwide, including in California.

iii. Defendant International Armament Corp. d/b/a Interarms Industries, Inc. ("Interarms") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia. Interarms imports and/or distributes firearms made by several different manufacturers, including defendant Carl Walther GmbH. Interarms distributes its products to at least 46 California dealers.

iv. Defendant RSR Wholesale Guns, Inc. is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York. Based on information and belief, RSR Wholesale Guns, Inc. distributes firearms in California, including guns manufactured by defendant Taurus International Manufacturing, Inc.

v. Defendant Southern Ohio Gun Distributors is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Ohio. Based on information and belief, Southern Ohio Gun Distributors distributes firearms in California.

vi. Defendant Traders Sports, Inc. ("Traders") is a corporation organized and existing under the laws of the State of California with its principal place of business in San Leandro, California. Traders distributes firearms in California and is one of the largest retailers of firearms in Northern California.

12. At all times relevant herein, DOES 125-200, inclusive, were business entities, the status of which are currently unknown. DOES 125-200 distribute, market and/or sell firearms that are or were found within California (hereinafter referred to as among the "Defendant Distributors").

13. Plaintiff is ignorant of the true names and capacities of Defendants referred to as DOES 1-200. Plaintiff alleges that each of the fictitiously named Defendants is responsible in some manner for the violations herein alleged. Plaintiff will seek leave to amend this complaint to allege such names and capacities as soon as they are ascertained. All of the above-named Defendants, DOES 1-200, and the agents and/or employees of those Defendants, were responsible in some manner for the obligations, liabilities and violations herein mentioned, which were legally caused by the aforementioned Defendants and DOES 1-200.

I. JURISDICTION AND VENUE

14. Defendants, and each of them, are subject to the jurisdiction of the Courts of the State of California by virtue of their business dealings and transactions in California, by causing an injurious effect in California through their acts or omissions, and/or by their violation of California Business and Professions Code Sections §17200 and §17500.

15. Venue is proper in this court because the violations and the resulting injuries out of which the causes of action arise occurred in part within the City and County of San Francisco.

I. GENERAL ALLEGATIONS

A. THE NUMBER AND SEVERITY OF FIREARM-RELATED CRIMES ARE A NATIONAL PROBLEM

16. The widespread availability and misuse of firearms by minors, convicted criminals, and other unauthorized users is one of the most serious problems facing this nation. In 1996, the most recent year for which final statistics are available, more than 34,000 people were killed with firearms. Of these, more than 14,300 were homicides and about 18,100 were suicides, with more than 1,100 deaths from unintentional shootings. In addition, based on 1992 data, approximately 99,000 individuals are treated annually in hospital emergency rooms for non-fatal firearm injuries, with about one-fifth of these for accidental shootings. Handguns cause most of these injuries and deaths. By comparison, in other industrialized nations, no more than a few hundred people are killed each year by handguns.

17. Statewide statistics for California reveal similar patterns of firearm violence. In 1997 alone, there were 1,835 homicides committed with a firearm, generally a handgun. In 1997, firearms were the predominant means of committing homicide, constituting 72.3% of total homicides. Handguns alone represented over 64% of the total homicides and 89% of firearm homicides. The figures for California in each year during the five-year period 1992 through 1997 are similar: For each year, firearms were used in over 70% of the total homicides and handguns were used in over 62% of the total homicides. In addition, firearms are a leading cause of serious injuries. In 1997, there were over 25,000 incidents in California in which a victim suffered serious injuries from a firearm.

18. These deaths and injuries are devastating for the individuals involved, for their families and communities, and for the State of California. Moreover, the pervasive threat of gun violence affects the tenor and quality of everyday life, even for those who are not direct victims.

19. A substantial percentage of the firearms used to inflict harm and injury on California residents are obtained through an illegitimate secondary market, that caters to buyers who include convicted criminals, minors, gang members and others precluded from lawfully purchasing Defendants' firearms (hereinafter, the "secondary market"). This secondary market is created and promoted by the conduct of Defendants. The existence of the secondary market, and the fact that the secondary market is fed by Defendants' acts and practices, is a matter of common knowledge to Defendants, as is demonstrated by the following sworn statement of Robert Haas, the former Senior VicePresident of Marketing and Sales for Defendant Smith & Wesson:

> The company [Smith & Wesson] and the industry as a whole are fully aware of the extent of the criminal misuse of handguns. The company and the industry are also aware that the black market in handguns is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal handgun licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices, to maintain that the present minimal federal regulation of federal handgun licensees is adequate and to call for greater criminal enforcement of those who commit crimes with guns as the solution to the firearm crime problem. . . . I am familiar with the distribution and marketing practices of the [sic] all of the principal U.S. handgun manufacturers and wholesale distributors and none of them, to my knowledge, take additional steps, beyond determining the possession of a federal handgun license, to investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.

20. National surveys demonstrate that minors and convicted criminals have easy access to firearms through the secondary market. For example, a recent survey showed that approximately 29% of 10th grade boys and 23% of 7th grade boys have at one time carried a concealed handgun. Another survey showed that 70% of all prisoners felt that they could easily obtain a firearm upon their release. Similarly, a recent study of 27 major urban centers by the

federal Bureau of Alcohol, Tobacco and Firearms ("ATF"), which analyzed more than 75,000 firearm trace requests, reported that more than 11% of firearms picked up in crime in major urban centers throughout the United States were possessed by juveniles under age 18. The same ATF study indicated that another 15% of crime guns were seized from persons 18-20 years old, more than from any other three-year age group, adult or minor.

21. Despite these statistics, Defendants have not taken reasonable steps to keep handguns out of the hands of minors. To the contrary, Defendants market their products in an effort to appeal to minors. For example, one of the gun industry's leading trade associations, Defendant National Shooting Sports Foundation Inc. (NSSF), announced in 1992 a "new focus on women and youngsters." NSSF started a "Youth Education Program" in a search for new customers and expansion of the gun market. The September/October 1992 issue of NSSF's magazine S.H.O.T. Business carried a column by a noted celebrity in the industry, Grits Gresham, in which he said:

> There's a way to help insure that new faces and pocketbooks will continue to patronize your business: Use the schools . . . . [I]t's time to make your pitch for young minds, as well as for the adult ones.

22. ATF has also reported that more than 45% of the crime weapons that it traces were illegally possessed by convicted criminals, and that more than 80% of the guns picked up in crime are handguns. Large percentages of these handguns were used in assaults, robberies, homicides, and other violent crimes. ATF tracing data also indicates that as many as 43% of firearms traced to crime in urban centers across America had been bought from retail dealers less than three years earlier, which is a strong indication that the firearm has been directly diverted into the secondary market.

A. DEFENDANTS' CONDUCT HAS CREATED AN ILLEGITIMATE SECONDARY MARKET OF HANDGUNS TO UNAUTHORIZED USERS

23. Defendants' marketing and distribution policies and practices facilitate, promote and yield high volume sales, widespread availability and easy access to firearms, without any meaningful attention to or concern for the foreseeable consequences.

24. Defendants know and have known for years that a substantial percentage of the firearms they manufacture, distribute, market and sell are purchased by unauthorized persons, including minors and convicted criminals. Many of the guns illegally sold in this secondary market are subsequently used in the commission of crime. Defendants knew or should have known that their conduct would facilitate and/or encourage their firearms to fall into the secondary market and to be used by unauthorized persons. Defendants' business practices that create and promote the secondary market include but are not limited to the following:

1. Oversaturation of the Legitimate Market

25. Defendants produce, market and distribute substantially more handguns than they reasonably expect to sell to legal purchasers. There are about 65 million handguns in the United States, and about 2.5 million more are added each year. This sales volume is well in excess of the sales volume that can be supported by the legitimate market. A substantial percentage of these sales is diverted to the secondary market. By their actions, defendants thus knowingly participate in and facilitate the secondary market for handguns.

1. Oversaturation of Weak Gun Control Jurisdictions

26. Firearms move from jurisdictions with relatively weak gun control laws to jurisdictions with stronger gun control laws. Defendants are aware of and profit from this illegal trafficking movement, yet do nothing to control or monitor sales in weak gun control jurisdictions to curb illegal trafficking of guns from those jurisdictions into more heavily regulated jurisdictions. To the contrary, Defendants eagerly sell as many guns as are necessary to feed the secondary market in weak gun control jurisdictions. As an example of this problem, Arizona and Nevada both border California and have weaker gun control laws than this State. According to ATF statistics, approximately 30% of the firearms traced in Southern California were originally sold at retail locations outside of California, principally Nevada and Arizona. Although this migration of firearms across state lines contravenes federal law as well as reduces

the efficacy of California and local law, Defendants continue to facilitate and encourage this migration by oversupplying those jurisdictions with weak gun control laws.

1. Distributing Handguns Without Exercising Adequate Control

27. Defendants' unrestrained distribution practices maximize their sales without any checks or precautions, and without placing effective controls on their distributors or dealers, which include disreputable gun shops, pawnshops, gun shows, and telemarketers. Although Defendants' distribution practices increase sales volumes and profits, they minimize contacts between defendants and their distributors and/or dealers, and prevent any meaningful monitoring of compliance with federal, state and local laws.

28. Defendants do not monitor or supervise their distributors or dealers, except in ways that are aimed at maximizing profits. Some defendants have distribution agreements that provide for the right of termination, and occasionally they have terminated or warned distributors or dealers. However, engaging in a dangerous sales practice -- such as one that would make guns easily available for potential criminal use -- has not been the basis for termination and is not prohibited by the terms of defendants' distributorship agreements. The reasons contemplated for termination are generally limited to the following: not maintaining minimum prices, advertising the price that the distributor pays to the manufacturer, or selling into the wrong market (some distributors are forbidden to sell to law enforcement or to make foreign sales). There is no mention of termination for selling to or facilitating the secondary market.

29. Defendants distribute their firearms without requiring that their dealers be trained or instructed: (a) to detect inappropriate purchasers; (b) to educate purchasers about the safe and proper use and storage of handguns, or to require any training or instruction of the purchasers; or (c) to inquire or investigate the purchasers' level of knowledge or skill or purposes for buying handguns. Defendant Manufacturers do not provide their distributors and dealers with any feedback, require their distributors to monitor or supervise their dealers, or train their distributors and dealers regarding the dangers and practices alleged herein.

30. Defendants purposely avoid any connection to or vertical integration with the distributors and dealers that sell their products. They offer high volume monetary incentives and generally refuse to accept returns, and they contractually attempt to shift all liability and responsibility for the harm done by their products to their distributors or dealers.

31. Defendants do not use available computerized inventory and sales tracking systems to limit and screen customers. Such systems are commonly and inexpensively used throughout American industry, particularly by companies that produce dangerous or harmful products.

32. Other manufacturers of dangerous or harmful products, including manufacturers of chemicals and paints, place restrictions and limits on the distribution, distributors, and dealers of their products to avoid known detrimental consequences. In sharp contrast, defendants have completely failed and refused to adopt any such limits or to engage in even minimal monitoring or supervision of their distributors and dealers.

1. Facilitating Straw Purchases and Multiple Sales

33. Defendants do not limit, or require or encourage their distributors and dealers to limit, the number, purpose or frequency of handgun purchases, nor do they monitor or supervise their distributors or dealers to encourage practices or policies that limit access to handguns for criminal purposes. As a direct, foreseeable and known result of defendants' conduct, a large number of handguns are regularly diverted into the secondary market through "straw purchases."

34. A "straw purchase" occurs where the purchaser of the firearm as reflected in the governmental application forms is a "dummy" purchaser for someone else, most often a person who is not qualified to purchase the firearm under the applicable federal, state and local laws. In some situations, the real purchaser will be present during the sale of the firearm. He or she may select the firearm, handle it and even provide the cash for the purchase. In other situations, for example in a straw purchase for a gang, the straw purchaser will purchase a number of

firearms within a short period of time. In this situation, a straw purchaser may engage in repeated multiple firearm purchases.

35. Straw purchases account for a substantial percentage of firearms diverted into the secondary market. According to a recent study, more than one-half of the firearms subject to firearm trafficking investigations were initially acquired as part of a straw purchase. Another study, this one involving firearms seized by law enforcement officials in Southern California, revealed that more than 80% of the guns retrieved by law enforcement were in the possession of a person other than the original purchaser.

36. Similarly, the level of multiple sales is quite large. One recent law enforcement study of Southern California analyzed 5,743 instances of multiple sales over a nine-month period involving the purchase of 13,181 firearms. A significant percentage of these transactions involved the purchase of three or more guns at a time. The report concluded that "[m]ultiple purchases seem relatively common in California, where there has been no set limit to the number of guns that a private person can purchase." More recent data indicates that as many as 22% of all guns purchased in California in 1998 were part of multiple sales.

37. Although straw purchases often occur under circumstances that indicate or should indicate that a straw purchase is being made, Defendants take no steps to prevent these straw purchases from occurring or to limit the number of straw purchases that occur. For example, Defendants offer no training or guidance to enable the store clerk to recognize when a straw purchase is occurring. Similarly, Defendants undertake no remedial actions to prevent a known straw purchaser from continuing to make purchases. Defendant Manufacturers also fail to adequately supervise and monitor both their distributors and dealers with respect to straw purchases. Additionally, they do not investigate their distributors and dealers or review their records to determine whether straw purchases are occurring or the extent to which they are. Finally, Defendant Manufacturers fail to impose any sanctions, including possible termination of the relationship, upon their distributors or dealers upon learning that a straw purchase or a series of straw purchases has occurred.

1. Allowing Sales to "Kitchen Table" Dealers

38. "Kitchen table" dealers are firearm dealers who do not sell firearms from an established retail store but rather sell firearms in informal settings, including but not limited to a house, car, flea market, gun show, or even on the street. Many of these kitchen table dealers operate illegally, in violation of state and local licensing and zoning laws. Many of these dealers also engage in other corrupt practices, including but not limited to selling firearms without completing the appropriate and necessary background checks on the purchaser, failing to report sales, failing to keep records of sales, falsifying records of sales, obliterating serial numbers on firearms, and/or falsely claiming that sold guns were stolen.

39. Defendants know or should know about the practices of kitchen table dealers set forth herein. Defendants have nevertheless sold thousands of guns to kitchen table dealers, without taking appropriate steps to reduce improper resale by such dealers. Such steps include but are not limited to supervising and monitoring such dealers, tracking crime gun trace requests relating to such dealers, reviewing dealer records for inaccuracies and falsified information, requiring distributors to resell guns only to dealers with a permanent store location, and requiring all dealers to maintain a permanent store location.

1. Designing Weapons Without Features to Discourage Unauthorized Use

40. Firearms trafficking depends upon the ability of unauthorized users to fire weapons obtained from traffickers. Use of designs and features that preclude this ability, such as designs and features that prevent unauthorized use or facilitate tracking of firearms, would discourage trafficking and reduce the flow of weapons to the illegal market. Notwithstanding the availability and feasibility of such designs and features, Defendants have continued to manufacture, distribute and sell firearms that do not include a design or feature preventing unauthorized use.

41. Thousands of handguns diverted to crime have had their serial numbers obliterated to prevent tracing of the firearm by law enforcement. Such guns are more useful to criminals who seek to eliminate the tracks of their crime. Defendants are aware of this problem,

and the ease with which numbers are obliterated, but have taken no initiative to make their serial numbers tamper-proof. A recent ATF study of 27 major urban centers found, on average, that more than 11% of the guns traced to crime had obliterated serial numbers.

A. DEFENDANTS HAVE DESIGNED THEIR GUNS TO APPEAL TO CRIMINALS AND HAVE INCREASED PRODUCTION TO MEET ILLEGAL DEMAND

42. Over the last 20 years, Defendants have changed certain design features and the production output of handguns. Previously, most handguns produced were revolvers, with six bullets stored in a rotating cylinder that could not be reloaded quickly. Now most handguns are semi-automatic pistols with bullets stored in magazines. These pistols fire at a faster rate, and their magazines typically can be detached and replaced very quickly, allowing for sustained firing against multiple targets.

43. Many of the pistols produced by Defendants (and many of the recent revolvers) are increasingly smaller, easier to conceal, more powerful, and rapid-firing. Hence, these weapons are ever more lethal. Many are also considerably cheaper than in the past.

44. The production of cheap handguns was especially prevalent among Defendants Lorcin, Bryco, Davis, and Phoenix. This group of California manufacturers is owned by members of an extended family, and has been dubbed by a well-known researcher as the "Ring of Fire." The older, established companies, like Defendants Smith & Wesson, Sturm, Ruger & Co., and Colt, have followed the lead of the "Ring of Fire" companies, producing similar handguns (while also making more expensive models).

45. Defendants have increased the production of particular handguns that are popular for use by criminals. For example, over the past decade, defendants increased their production of 9-millimeter handguns although their own market research showed that the market for 9-millimeters among law-abiding purchasers was already saturated. Nine-millimeter handguns are popular in the illicit drug trade and, according to most national studies, are among the

firearms used most frequently in crime. A recent study in one state concluded that 9 millimeter handguns are the weapons of choice for criminals, accounting for almost a third of all homicides.

46. Defendants know or should know that they manufacture and market weapons, the design of which stresses concealability, lethality, or other design features, which make these weapons unreasonably attractive to criminals. Defendants' emphasis on concealability is particularly problematic in California, because state law bans possession of a concealed weapon without a concealed carry permit. Very few such permits have been issued.

A. DEFENDANTS' CONDUCT IS CALCULATED TO AVOID THE RESTRICTIONS OF LOCAL, STATE AND FEDERAL LAWS

47. Federal, state and local firearm laws have been enacted in an effort to curb the abuses of gun violence and to protect the general public's health and safety. Despite the fact that governments have enacted laws to lessen the incidences of gun violence, Defendants have manufactured, designed, distributed, marketed and sold firearms in ways that undermine and frustrate the public policies embodied in federal, state and local law. The conduct and practices of Defendants as set forth herein have permitted and/or are calculated to allow Defendants to avoid the restrictions and/or prohibitions set forth in local, state and federal laws and regulations including, but not limited to: Title 18, United States Code Sections 921 – 930 *et seq*. (Chapter 44 – Firearms); California Penal Code Sections 12020-12040 *et seq.* (Chap. 1, Article 2 – Unlawful Carrying and Possession of Weapons); 12050 - 12054 *et seq.* (Chap. 1, Article 3- Licenses to Carry Pistols and Revolvers); 12070 - 12085 *et seq.* (Chap. 1, Article 4 – Licenses to Sell Firearms); 12200 –12250 *et seq.* (Chap. 2 - Machine Guns); 12270 -12290 *et seq.* (Roberti-Roos Assault Weapons Control Act of 1989); 12100 *et seq.* (Chap.1, Article 7 – Juveniles - Sale or Transfer of Concealable Firearm to Minor); 12500 -12520 *et seq.* (Chap. 5, Articles 1 and 2 - Unlawful Possession of Firearm Silencers/Misc.); 12800 - 12809 *et seq.* (Chap. 6, Article 8 - Basic Firearms Safety Instruction and Certificate); Alameda County Code section 9.12.010-090 (Regulating the Sale of Firearms); San Francisco Police Code sections 610, 613, 614, and 615 *et*

seq. (same); Sacramento City Code sections 28.05.501 (same) and San Mateo County Ordinance Code, Chapter 3.52 *et seq.* (same).

48. For example, the California Roberti-Roos Assault Weapons Control Act of 1989, California Penal Code sections 12275 –12290, and the United States 1968 Gun Control Act, 18 U.S.C. § 925 *et seq.,* ban the importation, manufacture and sale of "assault weapons." As the California legislature found and declared, this ban is based on the conclusion that such assault weapons "are particularly dangerous in the hands of criminals and serve no necessary hunting or sporting purpose for honest citizens." The ban enacted by the California legislature explicitly applies to both listed weapons and "any other models which are only variations of those weapons with minor differences, regardless of manufacturer."

49. Despite this statute, certain Defendants have marketed and sold in California firearms substantially similar to or identical to the firearms banned by the statutes. In fact, certain Defendants have made only minor modifications to the banned assault weapons or renamed the assault weapons enumerated in the above-referenced statutes in order to avoid these laws.

50. For example, after the California legislature banned the TEC-9 firearm, defendant Navegar continued to distribute and sell the identical firearm in California under the name "TEC-DC9." Navegar later distributed and sold a firearm under the name "TEC-DC9" that was the same design as the banned TEC-9, with only cosmetic modifications. Navegar's TEC-DC9 is a semiautomatic assault weapon that can accept a 32-round detachable magazine, and can be modified to be fully automatic. It has attachments that facilitate spraying bullets from the hip. The TEC-DC9 also has a coating that provides, according to the manufacturer's brochure, "excellent resistance to fingerprints." These features serve no legitimate sporting, hunting or self-defense purpose and are designed to appeal to criminals.

51. At all relevant times, defendant Navegar has been on notice of the lethal consequences of its practices. Navegar's assault weapons have frequently been used in multiple homicides, including the 101 California Street massacre and the recent high school shootings in

Littleton, Colorado. Defendant Navegar's marketing and sales director has been quoted as saying, "I'm kind of flattered [by condemnations of the TEC-9]. It just has that advertising tingle to it. Hey, it's talked about, it's read about, the media write about it. That generates more sales for me. It might sound cold and cruel, but I'm sales oriented." Larry Rohter, Pistol Packs Glamour and Reputation as a Menace, New York Times, March 10, 1992, at A1.

52. Despite the ban in Penal Code section 12020.5 against the advertisement of certain firearms, including but not limited to assault weapons, certain Defendants have advertised and continue to advertise such firearms to consumers within the State of California.

53. Additionally, numerous local ordinances prohibit the sale of "junk guns" or "Saturday Night Specials," including but not limited to San Francisco Police Code sections 610, 613, 614, 615, *et seq.,* Alameda County Code section 9.12.110, and Sacramento City Code section 48.02.103. The "Saturday Night Special" ("SNS") ordinances enacted in jurisdictions throughout California were designed to protect the public from poorly made, easily concealable guns. These firearms have been and continue to be used frequently in the commission of crimes. Defendants have continued to manufacture and/or distribute guns covered by SNS ordinances without taking reasonable steps to prevent sales of such guns within jurisdictions banning such sales. Examples of firearms falling within local SNS bans include but are not limited to: Bryco Models 28 and 48; Davis Model P-380, Rimfire Derringers, D-Series and Long-Bore; Navegar Models Intratec Protec-22, Protec-25 and Category 9; Jennings Models J-22 and J-25; Lorcin Models L-22, L-25, LT-25, L-32, L-9MM and L-380; and Phoenix Models Raven 25, HP-22, and HP-25.

A. DEFENDANTS HAVE FAILED TO INCORPORATE FEASIBLE AND EXISTING SAFETY TECHNOLOGY INTO THE DESIGN AND DISTRIBUTION OF FIREARMS

1. Adequate Warning and Safety Features Would Prevent Many Unintentional Shootings

54. Defendants, and each of them, have designed, manufactured, made or sold firearms that are defective because the firearms lack basic safety features and contain inadequate

warnings that result in unintentional shootings. Defendants continue to distribute their firearms without adequate warnings and instructions that inform the users of the risks of guns, including proper storage and use of the weapons, even though it is known or should be known by Defendants that approximately half of California residents who keep a firearm at home store their guns in an unsafe manner. Despite this knowledge, Defendants market and promote their firearms in a manner that ignores or understates the risks that such firearms pose to their owners and to other members of the household. Defendants also over-promote the purported self-defense and home protection benefits of their guns, in a manner that undercuts any warnings or instructions regarding safe storage of guns, and which results not only in irresponsible people possessing guns, but also in the irresponsible storage and handling of guns.

55. Defendants also manufacture, distribute and sell firearms that are defective and/or unreasonably dangerous in that their design lacks safety features or contains inadequate safety features. For example, it was and continues to be reasonably foreseeable and known by Defendants that users of semi-automatic handguns would not understand or appreciate that an undetectable round of ammunition may be housed in the firing chamber of a semi-automatic gun even though the ammunition magazine had been removed or emptied. Consequently, it was and continues to be reasonably foreseeable that this hazardous design would result in preventable, unintentional shootings. This hazardous design could be easily corrected through the use of a "magazine-disconnect safety" that would prevent the gun from firing with the magazine removed. These tragic, foreseeable shootings could also be prevented by use of an effective "chamber loaded indicator" that would warn a user when a bullet was in the firing chamber. Defendant Manufacturers have failed to incorporate such devices into their firearms.

56. The unsafe design of Defendants' guns results in 1,400-1,500 unintentional shooting deaths and over 18,000 non-fatal injuries from unintentional shootings every year. The General Accounting Office estimates that each year, 23% of the unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the gun's firing chamber. This results in as many as 320 to 345 deaths nationwide each year.

For each of these deaths, there are countless other unintentional shooting injuries that are not fatal.

57. Unintentional shootings with Defendants' unsafe firearms often involve adolescents. Adolescents are foreseeably attracted to guns and typically do not understand all of the risks associated with handling a firearm. According to the General Accounting Office, approximately 35% of all unintentional shooting deaths involve users of guns who were between the ages of 13 and 16. Many such shootings have occurred in the State of California.

58. Defendants have failed to take reasonable steps to guard against such foreseeable unintentional shootings, such as designing their firearms to include basic safety features and/or giving adequate warnings that would prevent or reduce such unintentional shootings. Defendants were aware of, and/or had available to them, devices, features, warnings, and other measures, which would prevent and/or decrease the dangers of their products. Defendants failed to remedy the deficiencies in their guns, warnings, instructions, promotions and/or advertisements of the firearms. Defendants further failed to adequately warn customers of these dangers, failed to inform distributors, dealers and/or buyers of available devices and measures that could prevent or decrease these dangers, failed to incorporate safety devices and features into their guns and/or discouraged the development and implementation of safety devices and features into their guns. Defendant Trade Associations failed to adopt adequate guidelines or standards relating to the development and inclusion of such features in firearms. Defendants knew or should have known that, as a consequence of their actions, California residents have been and will continue to be killed or seriously injured.

1. Personalized Safety Technology Would Prevent Access to Firearms by Unauthorized Users

59. The unsafe and defective design of Defendants' firearms results in thousands of shootings each year by persons who are not authorized to possess a firearm by the firearm's owner. Such shootings often occur when an adolescent or a criminal improperly obtains possession of a firearm.

60. Adolescent homicides and suicides are usually committed with firearms that the adolescent has taken from his or her home. In the United States, the rate at which youths aged 10-19 have committed suicide with a firearm has long averaged about once every six hours. In California, millions of minors live in homes where firearms are present. Studies have indicated that the odds that potentially suicidal minors will kill themselves double when a gun is kept in the home. Firearms are used in 65% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm-related suicides have been estimated to account for 81% of the increase in the overall rate of suicide from 1980-1992. A large number of such firearm-related teen suicides occur each year in California.

61. At all pertinent times, it was reasonably foreseeable that Defendants' guns would fall into the hands of unauthorized users. There are guns in approximately one-half of the homes in this country. One survey reports that 30% of gun-owners who have minors in the home keep their guns loaded. Another survey reports that 36% of gun owners with minors in the home keep their guns unlocked. The Federal Centers for Disease Control and Prevention estimates that 1.2 million elementary-aged, latchkey children have access to guns in their homes. Moreover, nearly 60% of juveniles between the ages of 10 and 19 have responded in surveys that they can acquire a gun should they want one.

62. At all pertinent times, Defendants have also been aware, or should have been aware, that when unauthorized users gained access to Defendants' guns, tragic and preventable shootings would result. Many teen suicides and shootings by minors and other unauthorized users could be prevented had Defendants cared to implement safer gun designs, including personalized gun technology that would prevent an unauthorized user from being able to fire the gun. The Defendants further knew that by failing to make and sell firearms with the means to prevent their firing by unauthorized users, it was reasonably foreseeable that guns stolen from private residences, gun stores and other locations could be employed by unauthorized users in violent criminal acts.

63. A study by the Johns Hopkins University School of Hygiene and Public Health's Center for Gun Policy and Research concluded that "[p]ersonalized handguns can eliminate many deaths and injuries by preventing the unauthorized firing of the firearm . . . [and] can be especially effective in preventing teenage [deaths], unintentional deaths and injuries of children, and shootings of police officers."

64. Defendants' unreasonably dangerous and/or defective products have repeatedly victimized California residents. At the time the Defendants manufactured, distributed, marketed, designed, promoted and/or sold their firearms, Defendants knew or should have known of the unreasonable dangers of their guns, including those described herein. Defendants were also aware of, and/or had available to them, personalized safety features, warnings, and other measures, which would prevent and/or decrease the dangers of their products. Defendant Manufacturers nevertheless failed to remedy the deficiencies in their guns. Defendant Manufacturers further failed to incorporate personalized safety features into their guns and/or discouraged the development and implementation of personalized safety features. Defendant Trade Associations similarly failed to adopt adequate guidelines or standards relating to the development and inclusion of such personalized safety features in firearms. Defendants knew or should have known that, as a consequence of their actions, California residents would be killed or seriously injured.

1. Defendants Have Failed to Compete to Develop Firearms with Personalized Safety Technology

65. A gun with personalized safety features sufficient to prevent or significantly reduce the risk of unauthorized use would have obvious appeal to a large segment of the legitimate handgun market. Despite this market appeal, Defendant Manufacturers have failed to compete with each other to develop and market firearms with such safety features.

66. Defendant Trade Associations have likewise discouraged the development of such safety features. For example, Defendant SAAMI holds itself out to the public as having been, since 1926, "the principle organization in the United States actively engaging in the development

and promulgation of product standards for firearms and ammunition." Although SAAMI has promulgated numerous product standards for the firearms industry, it has failed to develop any standards relating to personalized safety devices.

67. Instead of encouraging the firearms industry to develop safer products and distribution practices, defendant Trade Associations have in the past sought to discipline industry members who attempted to address safety issues. For example, when Defendant Smith & Wesson was faced in 1976 with a public outcry that might have resulted in a ban of most handguns in Massachusetts, Smith & Wesson announced that, as an alternative, it would support screening and registration of handgun owners. For this breach of industry policy, Smith & Wesson faced censure or ouster from SAAMI. To avoid possible action by SAAMI, Smith & Wesson for a time withdrew from SAAMI, then conformed its proposals and positions to industry policies.

A. DEFENDANTS' UNFAIR, FALSE, DECEPTIVE AND/OR MISLEADING STATEMENTS

68. For years, and continuing to date, Defendants have knowingly, purposefully and intentionally misled, deceived and confused members of the general public in California regarding the safety of firearms and the need for firearms within the home. To increase sales and profits, Defendants have falsely and deceptively claimed through advertising and promotion of their firearms that the ownership and possession of firearms in the home increases one's security. For example, handgun manufacturers have promoted firearms with slogans such as "homeowner's insurance," "tip the odds in your favor," and "your safest choice for personal protection." Research demonstrates that, to the contrary, possession of firearms actually increases the risk and incidence of homicide, suicide and intentional and unintentional injuries to gun owners and their families and friends. Defendants' over-promotional efforts have negated and undercut any warnings they have provided regarding the risks of guns in the home.

69. Defendants have made these false and deceptive statements even though they knew and/or should have known that studies and statistics demonstrate that the presence of

firearms in the home increase the risk of harm to firearm owners and their families, as set forth in the following statistics:

a. One out of three handguns is kept loaded and unlocked in the home;

b. Studies that control for the relevant variables have demonstrated that the homicide of a household member is almost three times more likely in homes with guns than in homes without them, suicide is five times more likely; and for homes with teenagers, suicide is ten times more likely;

c. Studies have also shown that a gun in the home is at least 22 times more likely to kill or injure a household member than it is to kill or injure an intruder in self defense;

d. A firearm is used for protection in fewer than two percent of home invasion crimes; and

e. For every time a gun in the home was used for self-defense or a legally justifiable shooting, there were four unintentional shootings, seven criminal assaults or homicides, and eleven attempted or completed suicides.

70. Defendants' advertising and promotion deceptively conveys the message that possession of a firearm and that the enhanced lethality of particular features and handguns will increase the personal safety of the owner and owner's household. Defendants fail to include any information or warning about the relative risk of keeping a firearm in the home. By failing to disclose such risks, the advertisements and promotions fail to correct a material misrepresentation in the minds of many consumers. Defendants' advertising and promotion is therefore likely to deceive members of the general public.

71. The U.S. Commission on the Causes and Prevention of Violence in a 1968 article entitled "Handguns and Violence in American Life," noted an increasing number of firearm deaths and injuries and concluded:

> [Americans] may seriously overrate the effectiveness of guns in protection of their homes. In our urbanized society the gun is rarely an effective

> means of protecting the home against either the burglar or the robber . . . . [A gun in the home] provides a measure of comfort to a great many Americans, but, for the homeowner, this comfort is largely an illusion bought at the high price of increased accidents, homicides, and more widespread illegal use of guns . . . . When the number of handguns increases, gun violence increases. (Pages xiii, 139.)

72. In California, a substantial number of deaths and injuries have occurred each year because firearms were purchased for home protection but were thereafter used in unintentional shootings, teen suicides, domestic disputes and other acts of violence as set forth herein. Defendants chose to disregard these well-known statistics and data in an effort to promote their firearms as security or "insurance" for the home, and to increase their sales and profits.

73. Moreover, although Defendants state publicly that they seek to preclude minors and criminals from possessing firearms, they in fact are engaging in practices that facilitate the illegal possession of firearms by minors and criminals through the secondary market. Defendants then utilize the threat posed by the criminal misuse of firearms -- a threat that their own practices have helped to create – to market and sell more firearms to the "home protection" market.

A. DEFENDANTS HAVE PROFITED FROM THEIR UNFAIR, UNLAWFUL OR FRAUDULENT BUSINESS PRACTICES AT THE EXPENSE OF CALIFORNIA AND ITS RESIDENTS

74. Defendants' practices have contributed to the overall success and profit for the $2-$3 billion firearm industry. Defendants, and each of them, knew or should have known that the thousands of firearms distributed through the illegitimate secondary market cause substantial injury and harm to California residents. Defendants' actions and omissions set forth herein unreasonably facilitate violations of federal, state and local laws, negate and undermine the public policies established by those laws, contribute to physical harm, fear and inconvenience to California residents, and are injurious to the public health, well-being and safety of California residents. Defendants' conduct has directly and indirectly injured and harmed California residents in the form of loss of life, injury, increased criminal activity involving firearms, law

enforcement costs, medical costs and emergency response costs. Defendants' conduct has allowed Defendants to profit from their unfair, unlawful and/or fraudulent business practices thereby contributing to Defendants' overall financial success and vitality at the expense of California and its residents.

I. FIRST CAUSE OF ACTION

PUBLIC NUISANCE

(AGAINST ALL DEFENDANTS AND DOES 1-200)

75. Plaintiffs incorporate by reference paragraphs 1 through 74 as though fully set forth herein.

76. The People of the State of California have a common right to be free from conduct that creates an unreasonable jeopardy to the public health, welfare and safety and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

77. Defendants' ongoing conduct relating to their creation and supply of a crime market for firearms has created and maintained a public nuisance throughout Northern California, as thousands of firearms that Defendants directly or indirectly supply to the illegitimate firearms market are thereafter used and possessed in connection with criminal activity in Northern California. As a result of the continued use of many of these firearms after they enter the State, California residents have been and will continue to be killed and injured by these firearms and California residents will continue to fear for their health, safety and welfare and will be subjected to conduct that creates a disturbance and reasonable apprehension of danger to their person and property.

78. Defendants' conduct, as set forth above, constitutes a public nuisance in the City and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento, because it is an unreasonable interference with common rights enjoyed by the general public.

79. Defendants' conduct, as set forth above, is an unreasonable interference with common rights enjoyed by the People of the State of California and by the general public in the City and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento, because it significantly interferes with the public's health, safety, peace, comfort and convenience.

80. Defendants' conduct, as set forth above, is an unreasonable interference with common rights enjoyed by the People of the State of California and by the general public in the City and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento, because Defendants knew or should have known that conduct to be of a continuous and long-lasting nature that produces a permanent and long-lasting significant negative effect on the rights of the public.

81. Defendants' ongoing conduct produces an ongoing nuisance, as thousands of handguns that Defendants directly or indirectly supply to the crime market, which are thereafter illegally used and possessed in California and in the City and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento, will remain in the hands of persons who will continue to use and possess them illegally for many years. As a result of the continued use and possession of many of these handguns, residents of the City and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento will continue to be killed and injured by these handguns and the public will continue to fear for its health, safety and welfare and will be subjected to conduct that creates a disturbance and reasonable apprehension of danger to person and property. The People of the State of California, acting through the prosecuting Cities and Counties, have a clearly ascertainable right to abate conduct that perpetuates this nuisance.

82. The presence of illegitimately possessed and used handguns in the City and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento, proximately results in significant costs to the public in order to enforce the law, arm the police force and treat the victims of handgun crime. Stemming the flow of handguns into the illegitimate firearms market will help to abate the nuisance, will save lives, prevent injuries and will make California a safer place to live.

Wherefore, Plaintiffs pray for relief and judgment against the Defendants jointly and severally, as is set forth below.

I. SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17500 FOR UNFAIR, DECEPTIVE, UNTRUE OR MISLEADING STATEMENTS AND ADVERTISING

(AGAINST ALL DEFENDANTS AND DOES 1-200)

83. Plaintiffs incorporate by reference paragraphs 1 through 82 as though fully set forth herein.

84. Defendants, acting individually and/or in concert, have made unfair, deceptive, untrue or misleading statements and advertisements in connection with the marketing and sale of firearms in violation of California Business and Professions Code §§ 17500 *et seq.* Defendants' unfair, deceptive, untrue or misleading statements include, but are not limited to, engaging in a campaign of deception and misrepresentation concerning the dangers of their firearms by disseminating advertisements and other statements which falsely state or imply that ownership of guns will increase home safety and security. Defendants knew or by the exercise of reasonable care should have known that home ownership of guns increases the risk of homicides, suicides and accidental injury or death in the home and that their advertisements and/or statements were untrue and/or misleading. Defendants failed to disclose the true nature of the risks associated with home ownership of guns or to correct their advertisements and/or statements despite their knowledge that they were misleading or wrong.

85. Defendants' unfair and/or deceptive acts or practices in issuing false or misleading statements and/or advertisements are and have been likely to deceive to members of the general public in California.

Wherefore, Plaintiffs pray for relief and judgment against the Defendants jointly and severally, as is set forth below.

I. THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ. FOR UNLAWFUL, UNFAIR OR FRAUDULENT BUSINESS PRACTICES

(BROUGHT ON BEHALF OF THE PEOPLE BY LOUISE H. RENNE AND THOMAS F. CASEY, III, AND ON BEHALF OF THE GENERAL PUBLIC BY JOE SERNA, JR., THE CITY OF BERKELEY AND THE COUNTY OF ALAMEDA AGAINST ALL DEFENDANTS AND DOES 1-200)

86. Plaintiffs incorporate by reference paragraphs 1 through 85 as though fully set forth herein.

87. Defendants, acting individually and/or in concert, have engaged in unlawful, unfair and/or fraudulent business practices in connection with the manufacture, marketing or sale of firearms in violation of Business and Professions Code Section 17200 *et seq.*, including, but not limited to, the following:

a. Defendants have engaged in an unlawful business practice by creating a public nuisance in violation of California Code of Civil Procedure section 731 and California Civil Code section 3480.

b. Defendants have engaged in unlawful business practices by violating California Business and Professions Code section 17500 et seq. and Civil Code section 1700(a)(5), as is set forth in Count I;

c. Certain Defendants have engaged in unlawful business practices by violating or aiding and abetting the violation of the California Roberti-Roos Assault Weapon Control Act of 1989, California Penal Code sections 12275-12290;

d. Certain Defendants have engaged in unlawful business practices by violating or aiding and abetting the violation of California Penal Code section 12020.5, which bans any advertising in California of certain unlawful weapons, including assault weapons;

e. Defendants, and each of them, have distributed, promoted, advertised, sold and marketed firearms using practices that encourage sales to unauthorized users, including minors and convicted criminals;

f. Defendant Manufacturers and Distributors, and each of them, sell their firearms without adequately screening, supervising, monitoring or regulating their employees, distributors and dealers;

g. Defendant Manufacturers and Distributors, and each of them, sell their firearms without adequately training, instructing, advising or setting standards for distributors and/or dealers of firearms, regarding how to legally and responsibly sell firearms;

h. Defendant Manufacturers and Distributors, and each of them, have continued to make sales to distributors and/or dealers, even though they knew or should have known that such distributors and/or dealers had distributed firearms to illegal purchasers and/or the illegitimate secondary market;

i. Defendants, and each of them, knew or should have known that their distribution practices were unreasonably unsafe but despite this knowledge defendants have failed to change their practices or to adopt procedures to curb the flow of firearms to the illegitimate secondary market;

j. Defendants, and each of them, knew or should have known that by distributing firearms without adequate self-supervision and regulation that they were creating, maintaining, or supplying the illegitimate secondary market in firearms;

k. Defendants, and each of them, have failed to conduct research, or review existing research, which would allow them to monitor and control the distribution of firearms and help to prevent the creation of an illegitimate secondary market;

l. Defendants, and each of them, have caused, permitted, and allowed their hazardous firearms to be promoted, marketed, distributed, and disseminated to unauthorized persons, including convicted criminals and minors, and have failed or

refused to take reasonable steps to ensure that their firearms were not acquired by unauthorized persons;

m. Defendant Manufacturers and Distributors, and each of them, have adopted distribution policies that allow and encourage distributors and dealers to make sales to likely straw purchasers, including sales involving large numbers of firearms in a single transaction;

n. Certain Defendant Manufacturers and Distributors have adopted distribution policies that allow sales to dealers who do not maintain a retail place of business for the resale of the firearms;

o. Defendant Manufacturers and Distributors, and each of them, have distributed firearms to dealers without requiring their dealers to demonstrate compliance with federal, state and local tax, zoning or licensing laws;

p. Defendant Manufacturers and Distributors, and each of them, have distributed firearms to dealers without requiring dealers to maintain accurate records of sales;

q. Defendant Manufacturers and Distributors, and each of them, have distributed firearms to dealers without requiring dealers to ensure that purchasers' identification, documentation and/or address is accurate;

r. Defendants, and each of them, do not monitor tracing data from the Bureau of Alcohol, Tobacco and Firearms, in order to discover and prevent trafficking;

s. Defendant Manufacturers, and each of them, have designed and sold firearms without incorporating feasible safety features and personalized gun technology which would prevent unintentional shootings and/or unauthorized and/or unintended users from gaining access to the firearms, have discouraged the development and implementation of such features and devices, and have not competed with each other by introducing firearms utilizing such technology;

t. Defendant Manufacturers, and each of them, have designed and sold firearms without incorporating feasible technology that would prevent persons from unlawfully obliterating the serial numbers required by law to be placed on those guns;

u. Defendants, and each of them, sell their firearms without providing adequate warnings and/or instructions regarding the storage or use of their firearms;

v. Defendants, and each of them, have over-promoted the purported self-defense and home-protection benefits of their guns in a manner that negates or undercuts any warnings or instructions regarding the safe storage and use of guns;

w. Defendants, and each of them, have manufactured, modified, re-named, marketed, distributed, and sold their firearms in manners that violate or are calculated to evade local, state and federal laws; and

x. Defendants, and each of them, have designed, manufactured and/or marketed their firearms in a manner that increases the demand for firearms by persons who use or possess them illegally.

88. Defendants' acts, conduct and practices in the design, marketing, distribution and/or sales of firearms have been and are unfair, unlawful and/or deceptive acts in violation of public policy and California Business and Professions Code § 17200 *et seq.*

Wherefore, Plaintiffs pray for relief and judgment against the Defendants jointly and severally, as follows:

I. PRAYER FOR RELIEF

1. On the First Cause of Action for public nuisance, for preliminary and permanent injunctive relief, requiring Defendants and their respective successors, agents, servants, officers, directors, employees and all person acting in concert with them to cease and desist from engaging in practices that create a public nuisance;

2. On the Second and Third Causes of Action, for injunctive and declaratory relief pursuant to Business and Professions Code §§ 17203 and 17535:

a. Declaring that Defendants have engaged in unlawful, unfair, and deceptive business acts and practices in violation of Business and Professions Code Section §§17200 et seq., and §§17500 et seq., and

b. Enjoining Defendants and their respective successors, agents, servants, officers, directors, employees and all person acting in concert with them from engaging in conduct in violation of Business and Professions Code §§17200 et seq., and §§17500 et seq.;

3. For pre-judgment and post-judgment interest as provided by law;

4. For civil penalties pursuant to Business and Professions Code §§ 17206, 17206.1, 17207, 17535.5 and 17536;

5. For restitution and/or disgorgement of wrongfully obtained monies pursuant to Business and Professions Code §§ 17203 and 17535;

6. For costs of suit as provided by law;

7. For attorneys' fees as provided by law; and

8. For such further relief as the Court deems equitable and just.

Dated: May 25, 1999

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